

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION

BRIAN MCCOMB,	:	
Plaintiff,	:	
v.	:	Case No. 3:25-cv-53
JOEL BRAY LACKEY, et al.,	:	JUDGE WALTER H. RICE
Defendants.	:	

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ENTRY OVERRULING WITHOUT PREJUDICE THE MOTION FOR  
SUMMARY JUDGMENT FILED BY PLAINTIFF BRIAN MCCOMB  
(DOC. #23)

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This case is before the Court upon a *sua sponte* review of the filings. On July 8, 2025, Defendants Randy T. Slovin, and Slovin & Associates Co, LPA ("Slovin Defendants") filed a pre-answer Motion to Dismiss pursuant to Fed. R. Civ. P. 12(b)(6). Doc. #15. On July 30, 2025, Plaintiff Brian McComb ("Plaintiff") filed a motion seeking leave to file an oversize document which contained his joint response in opposition to the Slovin Defendants' Motion to Dismiss as well as his own Motion for Summary Judgment. Doc. #21. The Court granted leave via notation order on August 1, 2025, to file the oversize motion.

All Defendants filed a joint response to Plaintiff's Motion for Summary Judgment on August 8, 2025. Doc. #22. In large part, their opposition stems from

the premature nature of Plaintiff's motion. Fed. R. Civ. P. 56(b) permits a filing of a motion for summary judgment at any time up until 30 days after the close of discovery. While there is no rule regarding how early a party may move for summary judgment, the standard for granting such a motion does provide some guidance.

A Court is only permitted to grant summary judgment if the "movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). At this point, where no discovery has occurred, and two of the parties have not yet served an answer, it is impossible to tell what facts may be relevant or whether the evidence shows that they are in dispute. As a result, at this stage, Plaintiff's Motion for Summary Judgment, Doc. #23, is **OVERRULED WITHOUT PREJUDICE** with leave to refile when discovery has occurred.

However, because Plaintiff's motion also contained his response in opposition to the Slovin Defendants' Motion to Dismiss, the Court will still consider his memorandum to that effect. The Slovin Defendants shall have fourteen (14) days from the date of this Entry to file any reply they deem necessary in support of their own Motion to Dismiss.

Date: August 11, 2025



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WALTER H. RICE  
UNITED STATES DISTRICT JUDGE